IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 24818 of 2003

Between:

Sri Diljeet Singh S/o. Late Sri Gurmukh Singh,
R/o.3-4-236, Kachiguda, Hyderabad-500027.

..... PETITIONER

AND

1 Municipal Corporation of Hyderabad, Repr. by its Commissioner and

Special Officer, Tank Bund, Hyderabad.
2 Chief City Planner, Municipal Corporation of Hyderabad, Tank Bund,

Hyderabad.
3 Sri Sardar Inderjeet Singh, S/o. Late Sri Sardar Gurmukh Singh,
R/o. Flat No.501, Gaurav Kalyan Apts, 3-4-229 & 230, Kachiguda,

Hyderabad-500027.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an Order, Direction or Writ more particularly one in the nature of Writ of Mandamus declaring the Permit No.194/91/2002 in file No.65/CSC/TP3/2002 dated 10-10-2002 granted by the respondents No.1 & 2 to the respondent No.3 for commercial purpose in respect of the property bearing municipal No.3-4-232 to 235 admeasuring 411 square meters situated at Kachiguda, Hyderabad, as illegal, arbitrary, high handed, unconstitutional and consequently cancel the same. Further consequently direct the respondents No.1 & 2 to demolish the illegal constructions raised by the respondents No.3 in utter violation of the municipal building bye-laws and the zonal regulations on the property bearing Municipal No.3-4-232 to 235 admeasuring 411 square meters situated at Kachiguda, Hyderabad in the interest of justice.

Counsel for the Petitioner: MR.SHYAM S.AGRAWAL

Counsel for the Respondents 1 & 2 : MR.RAMA RAO GANTA, Standing Counsel for Municipal Corporation of Hyderabad

Counsel for the Respondent No.3: Ms. Pushpinder Kaur

The Court made the following :

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24818 OF 2003

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ORDER:

The petitioner is a resident of Kachiguda in Hyderabad. He questions the validity of Permit No.194/91/2002 in file No.65/CSC/TP3/2002 dated 10.10.2002 granted by the first respondent to the third respondent for construction of a building for commercial purpose in the property bearing No.3-4-232 to 235 admeasuring 411 square yards. The petitioner seeks a declaration that the impugned permission granted by the first respondent as illegal, arbitrary and unconstitutional. The petitioner also seeks a consequential direction to respondents 1 and 2 to demolish the illegal constructions raised by third respondent in violation of Municipal Corporation of Hyderabad Building bye-laws and zonal regulations.

The petitioner claims to be owner of property bearing municipal No.3-4-236, Kachiguda, Hyderabad. The third respondent owns the property bearing municipal Nos.3-4-232 to 235, which is adjacent to the petitioner's property. The third respondent demolished the old structures and started raising new construction by engaging the services of the builder M/s.Poonam Constructions, after obtaining Permit No.194/91/2002 dated 10.10.2002. The petitioner alleges that third respondent has not left sufficient set back, more particularly towards the property of the petitioner, that the petitioner is not maintaining distance between the boundary wall of the petitioner and that the third respondent is making illegal constructions. The petitioner, therefore, gave complaints to Municipal Corporation of Hyderabad (M.C.H.), in vain and thereafter he filed a suit being O.S.No.4116 of 2003 on the file of the Court of X Junior Civil Judge, City Civil Court, Hyderabad. The said Court passed an order of temporary injunction in I.A.No.790 of 2003. However, the third respondent filed a suit being O.S.No.2854 of 2003 on the file of X Civil Judge, City Civil Court, Hyderabad and obtained order of injunction against M.C.H. and making illegal constructions. It is further alleged that the petitioner is constructing stilt plus five upper floors violating F.S.I. norms prescribed in G.O.Ms.No.423 and also in contravention of the guidelines in G.O.Ms.No.483. Therefore, the petitioner seeks a direction to the M.C.H. to take necessary steps and stop construction by third respondent.

This Court admitted the writ petition on 27.11.2003 and ordered notice in the

miscellaneous application being W.P.M.P.No.31276 of 2003. The said W.P.M.P. is listed before this Court on 03.09.2004, but the writ petition itself was finally heard with the consent of the parties and is being disposed of by this order.

The learned counsel for the petitioner Sri Shyam S.Agarwal submits that the property of the third respondent is to an extent of 411 square yards and therefore as per the guidelines issued in G.O.Ms.No.423, multi-storied complex is not permissible. He also submits that the permissible floor area ratio (FAR) is 1.33 with minimum front set back of 6 meters and 3 meters on other three sides. The third respondent is making constriction in violation of the same and therefore it is incumbent on the part of the M.C.H. to take appropriate action against the third respondent.

The learned counsel for the third respondent Ms.Pushpinder Kaur submits that the petitioner is step brother of the third respondent, who is enemically deposed of to third respondent. The petitioner demanded an amount of Rs.5,00,000/- (Rupees five lakhs only) and when the third respondent refused to pay the said amount, he filed a suit before the civil Court. Though the civil Court granted *ex parte ad interim* injunction, subsequently by order dated 13.02.2004, the Court of X Junior Civil Judge, vacated *ex parte ad interim injunction* dated 17.07.2003. The petitioner also filed C.M.A.No.70 of 2004 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. The application being I.A.No.753 of 2004 in C.M.A.No.70 of 2004 was dismissed by the appellate court on 14.05.2004. The petitioner has suppressed these facts and approached this Court again. She also submits that when the petitioner and his henchmen tried to intervene the construction on 24.10.2003, a criminal compliant being Crime No.432 of 2003 under Sections 447, 506, 324 IPC was registered by the Kachiguda Police Station and the same is pending.

The learned Standing Counsel for M.C.H. Sri Ganta Rama Rao submits that the Corporation has initiated necessary steps for inspecting the constructions made by the third respondent and if there are any deviations, necessary action would be initiated against the third respondent in accordance with the provisions of Hyderabad Municipal Corporation Act, 1955 (for short, the Act).

The learned counsel for third respondent placed before me various documents, which would show that *ad interim* injunction obtained by the petitioner in I.A.No.709 of 2003 in O.S.No.4116 of 2003 was vacated by the learned X Junior Civil Judge on 13.02.2004. Against the same, the petitioner filed C.M.A.No.70 of 2004 and his application for *ad interim* injunction being I.A.No.753 of 2004 was dismissed by the learned II Additional Chief Judge. This aspect of the matter has been suppressed in the affidavit. Therefore, the petitioner must be held to be guilty of *suppressio veri and suggestio falsi.* The petitioner does not even reveal the relationship between him and the third respondent. Be that as it is, there appears to be serious rivalry between the petitioner and the third respondent, who are none other than the step brothers. Therefore, as rightly submitted by the learned Standing Counsel for M.C.H., it is for the Municipal Corporation to take appropriate action in the matter. In this writ petition, no relief can be granted to the petitioner as prayed for. It does not, however, mean that this Court has passed any orders in favour of the third respondent nor

does it preclude the Municipal Corporation of Hyderabad to take necessary action in accordance with Sections 452, 460, 461 and 636 of the Act, after undertaking necessary inspection of the construction made by third respondent.

The writ petition is, therefore, disposed of directing the respondents 1 and 2 to thoroughly inspect the constructions made by the third respondent, pursuant to the building Permit No.194/91/2002 dated 10.10.2002 and take necessary action in accordance with the provisions of the Act.

The writ petition, with the above observations, is disposed of.

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(V.V.S.RAO,J)

22. 09.2004.

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To

1. The Commissioner and Special Officer, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.
2. The Chief City Planner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.
3. 2 CD copies.